

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Bodah 2	Team: Team # 5	CCRB Case #: 200107448	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/31/2001 8:45 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 4/30/2003	EO SOL 4/30/2003	
Date/Time CV Reported Tue, 11/13/2001 11:00 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 11/13/2001 11:00 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Barker	25028	883476	083 PCT
2. POM Eric Delman	23705	922228	083 PCT
3. POM James Mckenna	04413	910664	083 PCT
4. LT Michael Rogers	00000	894906	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Scott McMaster	15295	893367	083 PCT
2. POM Brian Kenny	06092	910449	083 PCT
3. POM Gualberto Garcia	04896	895200	083 PCT
4. POM Pedro Vasquez	03038	902541	083 PCT
5. POM Philip Huemmer	20846	904178	083 PCT
6. POM Waldo Cuba	01344	917482	083 PCT
7. SGT Joseph Delduca	02660	903766	PSA 3
8. LT Charles Flynn	00000	887813	083 PCT
9. POM Michael Corvi	05637	923708	083 PCT
10. LT Gerald Cawley	00000	903591	083 PCT
11. SGT John Delpozso	03267	897321	083 PCT
12. SGT Wayne Lock	05434	901847	083 PCT
13. POM Jose Rosado	11265	907204	083 PCT
14. SGT John Drouin	00451	906154	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Rogers	Discourtesy: On October 31, 2001, Lieutenant Michael Rogers spoke rudely to § 87(2)(b)	
B.LT Michael Rogers	Abuse: On October 31, 2001, Lieutenant Michael Rogers refused to provide his shield number to § 87(2)(b)	
C.LT Michael Rogers	Force: On October 31, 2001, Lieutenant Michael Rogers used physical force against § 87(2)(b)	
D.POM Michael Barker	Force: On November 7, 2001, Officer Michael Barker used a chokehold against § 87(2)(b)	
E.POM Michael Barker	Force: On November 7, 2001, Officer Michael Barker struck § 87(2)(b) with a flashlight.	
F.POM Michael Barker	Abuse: On November 7, 2001, Officer Michael Barker arrested § 87(2)(b)	
G.POM Eric Delman	Force: On November 7, 2001, Officer Eric Delman used pepper spray against § 87(2)(b)	
H.POM James McKenna	Abuse: On November 7, 2001, Officer James McKenna arrested § 87(2)(b)	
I.POM James McKenna	Force: On November 7, 2001, Officer James McKenna used physical force against § 87(2)(b)	

## Synopsis

This complaint, covering two separate incidents, was filed by § 87(2)(b) and her son § 87(2)(b) in person at the CCRB on November 13, 2001. The first incident occurred on October 31, 2001. § 87(2)(b) and several friends were at the corner of § 87(2)(b) and § 87(2)(b) in Brooklyn, listening to a portable stereo and dancing, Lieutenant Michael Rogers told them to disperse. § 87(2)(b) arrived midway through the incident. The § 87(2)(b) allege that Lieutenant Rogers called the group “wise-asses” (allegation A), refused his shield number(allegation B), and pushed § 87(2)(b) (allegation C). The second incident occurred on November 7, 2001. § 87(2)(b), § 87(2)(b), and several others were at the corner of § 87(2)(b) and § 87(2)(b). Officer Michael Barker of the 83 Precinct walked past on foot patrol, smelled marijuana, and ordered the group to disperse. § 87(2)(b) was waiting for his friend § 87(2)(b) and remained as the others left. Officer Barker returned and began to argue with § 87(2)(b). § 87(2)(b) arrived in his car and § 87(2)(b) told him that Officer Barker was being an “asshole.” Officer Barker told § 87(2)(b) to run or get in § 87(2)(b)'s car, and placed a 10-85 call for additional units. § 87(2)(b) walked toward his house on § 87(2)(b) with Officer Barker following. Central called Officer Barker to obtain a precise location but he did not respond. Central told the numerous responding units this. As Lieutenant Charles Flynn pulled up, Officer Barker took hold of § 87(2)(b) by the throat in front of § 87(2)(b) (allegation D). § 87(2)(b) struggled and grabbed Officer Barker's throat. Lieutenant Flynn assisted Officer Barker as § 87(2)(b) continued struggling and stood back up. Officer Barker swung his flashlight at § 87(2)(b) hitting his lower lip (allegation E). § 87(2)(b) was arrested (allegation F). Meanwhile, Officer Eric Delman, Officer James McKenna, Officer Michael Corvi and Officer Philip Huemmer arrived and tried to control § 87(2)(b), § 87(2)(b) and § 87(2)(b) who were upset. The officers and § 87(2)(b) a neighbor, tried to keep the group in the yard of § 87(2)(b). Officer Delman discharged pepper spray at § 87(2)(b) (allegation G). § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were arrested § 87(2)(b) was released at the precinct without charges). § 87(2)(b) came out of § 87(2)(b) to see what was happening. When § 87(2)(b) saw § 87(2)(b) who had been on his way to work, being placed into a police car, he approached and asked whether he should call § 87(2)(b)'s wife or workplace for him. Officer McKenna arrested § 87(2)(b), § 87(2)(b), § 87(2)(a) 160.50, and dislocated § 87(2)(b)'s right pinky finger while handcuffing him (allegations H and I). § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were taken to the hospital from the precinct. § 87(2)(b) received three sutures for a laceration to his lower lip. § 87(2)(b) and § 87(2)(b) were treated for pepper spray, and § 87(2)(b) was treated for the dislocated right pinky finger.

§ 87(2)(b), § 87(2)(g)

## Summary of complaint

§ 87(2)(b)

§ 87(2)(b), a § 87(2)(b), was interviewed at the CCRB on November 13, 2001 (enclosures 7a-7d). § 87(2)(b) stated that on October 31, 2001, she was returning home from class at approximately 8:45 PM when she saw a group of police interacting with a group of youths that included her § 87(2)(b)-old son, § 87(2)(b). The police were ordering the youths

to move, and the youths were disputing the order, saying they had already moved. One of the officers (identified by investigation as Lieutenant Michael Rogers) was calling the youths “wise-asses” and getting in their faces. § 87(2)(b) asked Lieutenant Rogers for his badge number, which Lieutenant Rogers failed to provide. During the dispute, Lieutenant Rogers pushed § 87(2)(b) with both hands on his chest. § 87(2)(b) did not fall and was not injured. § 87(2)(b) identified herself as § 87(2)(b)’s mother and asked what the problem was. Lieutenant Rogers and the other officers then suddenly left.

§ 87(2)(b) § 87(2)(b) § 87(2)(b)

§ 87(2)(b) a § 87(2)(b)-old black male who was § 87(2)(b) at the time of this incident, first spoke to EMTs at the 83 Precinct on November 7, 2001 (enclosures 54a-54j) and said, “I got mace in my eyes.” At § 87(2)(b) § 87(2)(b) told the doctor he had been involved in a fight and complained that the pepper spray caused “blurry vision.”

§ 87(2)(b) was interviewed as a walk-in at the CCRB on November 13, 2001 (enclosures 8a-8e). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) added that the incident began when he and several friends were rapping along to music from a portable stereo, and the subject officer approached and told them to disperse. § 87(2)(b) stated that the group dispersed to a nearby pizzeria, but the officer continued to bother them, and § 87(2)(b) and the others complained to him.

§ 87(2)(b) stated that on November 7, 2001, he stopped at the corner of § 87(2)(b) and § 87(2)(b) to talk with a few neighborhood men, including brothers § 87(2)(b) and § 87(2)(b). An officer (identified by investigation as Officer Michael Barker) approached and said he smelled marijuana, which the men denied smoking. Officer Barker ordered the men to leave and § 87(2)(b) went to a nearby pizzeria while § 87(2)(b) and others stayed behind arguing with Officer Barker. § 87(2)(b) ordered a slice of pizza and cookies, but the pizzeria was out of cookies. § 87(2)(b) went outside, where he saw the car of § 87(2)(b) § 87(2)(b) (identified by investigation as § 87(2)(b) § 87(2)(b) at § 87(2)(b) § 87(2)(b) walked over to ask § 87(2)(b) the delivery man for the pizzeria, to get more cookies. § 87(2)(b) saw § 87(2)(b) approaching with Officer Barker following him on foot. Officer Barker threw § 87(2)(b) with his back against a car and put his forearm across § 87(2)(b)’s throat. Officer Barker told § 87(2)(b), § 87(2)(b), and § 87(2)(b) not to move. § 87(2)(b) pushed at Officer Barker, who grabbed § 87(2)(b)’s throat in his hand and squeezed. § 87(2)(b) yelled and struggled. As § 87(2)(b) broke loose from Officer Barker’s hold, a backup officer took him to the ground. § 87(2)(b) got up, and Officer Barker hit § 87(2)(b) on the right side of his forehead and again on the mouth with his flashlight. § 87(2)(b) fought back. Approximately 20-30 more officers arrived. Some subdued and handcuffed § 87(2)(b). § 87(2)(b) came out of the § 87(2)(b) house and stood in the yard with § 87(2)(b) and § 87(2)(b). An officer pushed § 87(2)(b) into the gate and ordered him to get down, which § 87(2)(b) did. § 87(2)(b) was then handcuffed and picked up. While he was being handcuffed, § 87(2)(b) § 87(2)(b) (identified by investigation as § 87(2)(b) exited the house. An officer (identified by investigation as Officer McKenna) grabbed and handcuffed § 87(2)(b). As § 87(2)(b) was being handcuffed, he began to yell in pain. § 87(2)(b) was able to see that one of his pinky fingers was pointing perpendicularly from the other fingers. The arresting officers walked § 87(2)(b), § 87(2)(b), and § 87(2)(b) out of the front gate. An officer (identified by investigation as Officer Delman) sprayed the entire group, including § 87(2)(b)’s arresting officer, with pepper spray. § 87(2)(b) who was affected strongly by the pepper spray, was taken to the 83 Precinct and placed in a holding cell until EMS took him and three others to § 87(2)(b).

### **Results of investigation**

#### ***Interviews with civilians:***

§ 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB at his residence, § 87(2)(b) in Brooklyn, on April 4, 2002 (enclosures 9a-9c). § 87(2)(b) is a § 87(2)(b)-old black male § 87(2)(b) who suffers from multiple sclerosis § 87(2)(b).

§ 87(2)(b) stated that on November 7, 2001, at approximately 9 PM he walked to § 87(2)(b) to return some dishes to a neighbor (identified by investigation as § 87(2)(b)). A large number of police officers came suddenly from the direction of § 87(2)(b). Nearby, § 87(2)(b) saw two uniformed white male officers in their 30s with medium builds punching § 87(2)(b) in front of § 87(2)(b). § 87(2)(b) described them as “beating the hell out of” § 87(2)(b). § 87(2)(b)’s mouth was bleeding. Some of § 87(2)(b)’s brothers, including § 87(2)(b) who live at § 87(2)(b) were upset. § 87(2)(b) went to the gate in front of § 87(2)(b) to prevent § 87(2)(b) from interfering with the situation. § 87(2)(b) was not sure of exactly which § 87(2)(b) brothers were present, and stated that there are 11 brothers in the family. § 87(2)(b) felt something sprayed on his neck and the back of his head, which he realized was pepper spray when he felt a burning sensation. Police pushed § 87(2)(b) into the yard and against a refrigerator box in the yard of § 87(2)(b). A cop said “You keep your fucking ass right there” to § 87(2)(b). § 87(2)(b) stated that he said, “I didn’t do nothing,” but complied. § 87(2)(b) and several others were handcuffed. § 87(2)(b) was cursing at the cops because they had punched him in the face. § 87(2)(b) stated that the cops were “real nasty,” but did not specify what he meant. At the precinct, § 87(2)(b) was placed in a holding pen with the others. Approximately 10 minutes later, the “captain” called § 87(2)(b) by name, told him, “I’m sorry for the inconvenience,” and released § 87(2)(b). § 87(2)(b) stated that he was just caught in the middle of the incident and did not know how it started. § 87(2)(b) stated that at some point while he and the others were locked up together, § 87(2)(b) told him that his pinky finger was broken and he couldn’t move it. § 87(2)(b) stated that he has a cousin named § 87(2)(b) who is a detective § 87(2)(b), but claimed he did not contact him on the day of his arrest for assistance.

§ 87(2)(b)

§ 87(2)(b) first spoke about the November 7 incident with medical personnel that treated him § 87(2)(b) (enclosures 55a-55v). § 87(2)(b) told EMTs “my right pinky is bent” and that “I heard it pop.” § 87(2)(b) personnel note that § 87(2)(b) claimed the pain to his finger was secondary to being hit by an officer.

§ 87(2)(b) was interviewed at the CCRB on April 18, 2002 (enclosures 13a-13c). § 87(2)(b) is § 87(2)(b) old § 87(2)(b). § 87(2)(b) owns § 87(2)(b) in Brooklyn, the house in which he and a number of his family members reside and in front of which this incident occurred. § 87(2)(b) testified about the incident as follows.

On November 7, 2001, § 87(2)(b) came home from work at approximately 7:15 PM, showered, ate dinner, and began watching TV. At approximately 10 PM, § 87(2)(b)’s girlfriend § 87(2)(b) knocked on the door. § 87(2)(b) was crying and told § 87(2)(b) that the cops were outside beating up his brother and friends. § 87(2)(b) was upset and, wearing a t-shirt, shorts, and a pair of slippers, went out the front door. § 87(2)(b) saw by light from streetlights approximately 20 to 30 officers. Approximately 10 of the officers were inside the gate, and several civilians were being arrested on the ground. The street was full of police vehicles. § 87(2)(b) went down the steps (his residence is a brownstone-style building with the main entrance up a short flight of steps) and at the bottom was asked by an officer who he was. § 87(2)(b) explained that he was the owner of the house and was told to wait and the situation would end soon. § 87(2)(b) waited inside the gated front yard. § 87(2)(b) could hear some people who were being arrested yelling that their eyes were burning. § 87(2)(b) did not know at this time who was under arrest and did not see any of the arrestees struggling. The scene was chaotic, and officers were yelling at the arrestees to shut up. After approximately five minutes, § 87(2)(b) saw his brother § 87(2)(b) and another person in handcuffs being taken to a police car. § 87(2)(b) went out of the gate and approached to find out if § 87(2)(b) wanted § 87(2)(b) to call his wife. The officer escorting § 87(2)(b) and one or two officers standing nearby told § 87(2)(b) to get back. § 87(2)(b) asked § 87(2)(b) a question and an officer (identified by investigation as Officer McKenna) turned § 87(2)(b) around and pushed him against a car. § 87(2)(b) said, “What did I do?” Three to four more white male officers assisted in rear handcuffing § 87(2)(b). § 87(2)(b) felt a “struggling” at his right hand and then a warm feeling in his right pinky finger as he was being handcuffed. There was no serious pain at the time. As § 87(2)(b) was taken to the stationhouse, he began to feel stinging in the finger and noticed that it was bent at the second knuckle. At the desk, § 87(2)(b) yelled about his finger and asked why he was under arrest, arguing with officers. § 87(2)(b) saw that his brothers § 87(2)(b), § 87(2)(b), friends § 87(2)(b)

§ 87(2) and § 87(2)(b) (last name unknown, identified by investigation as § 87(2)(b) and neighbor § 87(2)(b) were also under arrest. The others complained that they had been “maced.” § 87(2)(b) was released from the stationhouse within 15 minutes. Police officers gave § 87(2)(b) water to flush his eyes with. After the group had been held at the stationhouse for approximately one hour, the police called EMS. § 87(2)(b), § 87(2)(b), § 87(2), and § 87(2)(b) were taken to § 87(2)(b). § 87(2)(b)'s finger was diagnosed as dislocated and a doctor placed the joint back in its socket and gave § 87(2)(b) a splint and an ace bandage.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b) first spoke about the November 7 incident with medical personnel § 87(2)(b) (enclosures 56a-56h). § 87(2) told EMTs, “I was maced in my face,” and claimed that while involved in a large fight, his eyes, mouth, and nose began to burn. At § 87(2)(b) § 87(2) stated that he was pepper sprayed by the police when he was in a fight in the street.

§ 87(2) who was § 87(2)(b) old at the time, was interviewed at the CCRB on April 18, 2002 (enclosures 10a-10c). § 87(2) § 87(2)(b), stated that between 9 PM and 10 PM on November 7, 2001, he exited his home, § 87(2)(b) in Brooklyn, to go to work. § 87(2) saw three officers on top of someone on the sidewalk outside the gate to his yard, in front of § 87(2)(b). As he came down the steps, § 87(2) noticed that the person under the officers was his brother § 87(2)(b). § 87(2) saw one of the officers (identified as Officer Barker) hit § 87(2)(b) in the face with a black flashlight a single time. § 87(2) estimated approximately 40 officers in total were present and the scene was chaotic. A few officers at the gate kept people there from going outside. A neighbor, § 87(2)(b) also barred the gate to keep people in the yard from going to § 87(2)(b). § 87(2) watched the officers with § 87(2)(b) for two or three minutes and saw blood on the ground nearby. § 87(2) and the other people inside the yard were compliant, when “out of nowhere” the group was pepper sprayed. Pepper spray got in § 87(2)'s eyes and he backed up as a group of officers rushed into the yard. § 87(2) was pushed against the gate and handcuffed. § 87(2) asked what was happening and was told that he would be released with a ticket and to remain calm. § 87(2) and his friend § 87(2) § 87(2) who was also arrested, were placed in a police car. § 87(2) could not see because of the pepper spray. After § 87(2) was in the car for approximately two minutes, his brother § 87(2)(b) came to the car and asked him what happened and if he should call § 87(2)'s job or wife. An officer told § 87(2)(b) to get out of the way, and § 87(2) then heard chaotic sounds (he still couldn't see). It sounded to § 87(2) as if § 87(2)(b) was being “beaten” and § 87(2) heard him yell. After he was driven to the stationhouse, § 87(2)'s eyes cleared up somewhat and he was able to see that § 87(2)(b)'s finger was bent at the second knuckle. § 87(2)(b) said he didn't know how it happened and was yelling about it. § 87(2) saw § 87(2)(b) beside him at the desk with his lip swollen and bleeding. EMS arrived and attended to § 87(2)(b) and § 87(2)(b). There was confusion about who needed medical attention. § 87(2) was taken to the hospital. § 87(2)'s eyes were flushed and he was given a prescription.

On § 87(2)(b), § 87(2) made a 50H deposition (enclosures 11a-11hh). § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)'s initial statements regarding the November 7 incident were to medical personnel § 87(2)(b) (enclosures 57a-57k). § 87(2)(b) told EMTs, "I was hit with a flashlight in the mouth" and claimed his bottom teeth felt loose. At § 87(2)(b) § 87(2)(b) also told the triage nurse that he was hit by a flashlight.

§ 87(2)(b) was interviewed by the CCRB at § 87(2)(b) his residence, on June 12, 2002 (enclosures 15a-15c). § 87(2)(b) is a § 87(2)(b) old § 87(2)(b). § 87(2)(b) stated that he, § 87(2)(b) § 87(2)(b) his brother § 87(2)(b) § 87(2)(b) and three to four others were hanging out and talking on the corner of § 87(2)(b) and § 87(2)(b) on November 7, 2001 at approximately 10 PM. The group has spontaneously assembled there. An officer (identified by investigation as Officer Barker) came by and told the group to disperse. Everyone was naturally drifting away at that time anyway and did so. § 87(2)(b) however, remained on the corner because he was waiting for his friend § 87(2)(b) and saw § 87(2)(b)'s truck at a stop light just a block away. Officer Barker came back and had "an attitude," telling § 87(2)(b) that he smelled marijuana and to "get the fuck off the corner." § 87(2)(b) stated that he and the others at the corner do not smoke marijuana, but that an acquaintance known to him only by the street name § 87(2)(b) had walked past smoking marijuana.)

At that time, § 87(2)(b)'s truck pulled up and § 87(2)(b) approached it. § 87(2)(b) noticing the interaction with Officer Barker, asked § 87(2)(b) what was happening, and § 87(2)(b) replied that Officer Barker was "being an asshole." Officer Barker asked § 87(2)(b) "Did you call me an asshole?" and § 87(2)(b) responded, "No, my friend asked me a question and I told him you're *being* an asshole." Officer Barker told § 87(2)(b) he'd "better run" or get in § 87(2)(b)'s truck because he was calling backup. § 87(2)(b) told Officer Barker that he lived down the block and was going to walk there. § 87(2)(b) and Officer Barker were heated and talking loud to each other. § 87(2)(b) remained at the corner as § 87(2)(b) walked at a fast pace toward his house. Officer Barker followed § 87(2)(b) closely. When § 87(2)(b) got in front of § 87(2)(b), he heard Officer Barker calling out, "You passed me," and assumed that the backup had arrived, although he did not see them. Officer Barker grabbed § 87(2)(b)'s throat in his right hand and squeezed, pushing § 87(2)(b)'s back up against a vehicle parked in the area. § 87(2)(b) told Officer Barker to get off his neck and began gagging. § 87(2)(b) grabbed at Officer Barker's arm with his right hand, but his hand slipped and landed on Officer Barker's throat, which § 87(2)(b) began to squeeze. Other officers arrived § 87(2)(b) did not know who) and helped Officer Barker take § 87(2)(b) to the ground face first. § 87(2)(b) got up and Officer Barker swung a flashlight with his right hand in an underhand swing at § 87(2)(b) knocking his baseball hat off but barely connecting with him. Officer Barker swung the flashlight a second time and struck § 87(2)(b) in the mouth, causing a laceration to § 87(2)(b)'s lower lip that was later closed with three stitches. The blow caused pain and § 87(2)(b) thought his teeth might have been knocked loose. § 87(2)(b) complained that his teeth are still loose, but he has not been to a dentist.) Officer Barker used his right hand to swing the flashlight. § 87(2)(b) pushed the officers away and told Officer Barker, "You busted my lip? I'm going to press charges." § 87(2)(b) was then handcuffed and transported to the stationhouse in the same car as § 87(2)(b). When he arrived, § 87(2)(b) discovered that § 87(2)(b) (a youth known to § 87(2)(b) from the neighborhood), his close friend § 87(2)(b) and his brothers § 87(2)(b) and § 87(2)(b) had also been arrested. § 87(2)(b) saw that § 87(2)(b)'s pinky was "out of place" with the digit pointed outward. § 87(2)(b)'s eyes were red and he and § 87(2)(b) complained that they had been pepper sprayed. EMS arrived at the stationhouse. Officer Barker, when he heard § 87(2)(b) say he was hit with a flashlight, told the EMTs that § 87(2)(b) hurt his lip when he was taken to the ground. § 87(2)(b) stated that either at the scene or at the stationhouse, Officer Barker said he had been sued three times and he didn't care if § 87(2)(b) sued him because he wouldn't have to pay for it.

§ 87(2)(b)

§ 87(2)(b) was interviewed at her residence on November 8, 2002 (enclosures 16a-16c). § 87(2)(b) is a § 87(2)(b)-old home § 87(2)(b) of Haitian descent § 87(2)(b). On November 7, 2001, § 87(2)(b) was residing at § 87(2)(b) in Brooklyn, next door to the § 87(2)(b) family at § 87(2)(b). § 87(2)(b) was in her bedroom in the front of § 87(2)(b) at approximately 10:15 PM when she heard a lot of noise outside. § 87(2)(b) went to the front door to see what was happening. § 87(2)(b) saw five to six police in the street outside. Four or five of the § 87(2)(b) sons (names not recalled) were

running inside the gated front yard of § 87(2)(b) and the police chased them into the yard. Some of the § 87(2) boys went up the front stairs of their house, and some were in the yard. One of the § 87(2) boys with a black jacket was on the ground and the officers were searching him. The other § 87(2) sons were very upset, and said, “You cannot come inside our gate, it’s not fair,” and “C’mon, man, you’re not supposed to do that to my brother.” § 87(2)(b) believed the § 87(2) boys were upset because the police were after their brother. § 87(2)(b) did not see any injuries on the § 87(2) boys. One officer said that the police were clearing the sidewalk because there were too many people out there. § 87(2)(b) did not see anyone pushing the police and stated that the situation was mostly calm. § 87(2)(b) stated that everybody was coming out of their houses to see what was happening, but people were calm and just looking. The people were on the sidewalk and did not get too close to the police. § 87(2)(b) recalled that during the incident, she had seen her neighbor § 87(2)(b) in the street, facing § 87(2)(b)’s house, asking the police a lot of questions.

An officer came inside § 87(2)(b)’s gate and looked around as if he were trying to find something in the yard, and § 87(2)(b) decided to go back inside with her daughter. The incident was still ongoing when she went back inside and she did not see anyone arrested.

#### ***Attempts to interview other witnesses:***

§ 87(2) § 87(2) was contacted during a field trip to the incident location, but refused to testify without consulting his attorney while the criminal case was open. When the charges against § 87(2)(b) were dismissed, he arranged an appointment at his home to testify, but failed to appear for the appointment. § 87(2)(b) did not respond to the numerous letters and phone calls seeking his cooperation (enclosures 68a-68q).

Numerous phone messages were left for § 87(2)(b) on his cell phone and at his workplace (enclosures 68a-68q). No home address was known for § 87(2)(b) but letters were sent to his work address. A letter was hand-delivered to the work address by the undersigned, at which time the employee at the shop confirmed that § 87(2)(b) had received previous phone messages and letters for him there.

#### ***Interviews with police:***

##### ***Subject Officer Eric Delman***

Officer Eric S. Delman was interviewed at the CCRB on June 6, 2002 (enclosures 18a-18b). Officer Delman stated that on November 7, 2001, he worked from 3 PM to 11:35 PM. Officer Delman was assigned to patrol the 83 Precinct in uniform in a marked patrol car. Officer Delman was assigned at 9:10 PM to patrol Sector A with Officer Corvi. Officer Delman had no entries in his memo book regarding the incident. Officer Delman had an independent recollection of the incident as follows.

Officer Barker, who was on a CONDOR overtime foot post before the beginning of his normal tour, called a 10-85 (call for backup) over the radio, saying he was pursuing a suspect. Officer Delman knew that the general area of the 10-85 was the scene of numerous shootings over the years. Officer Corvi and Officer Delman responded. Numerous other cars were already on the scene. Officer Delman recalled driving past Officer Barker, who had a young male black (identified as § 87(2)(b) in handcuffs outside a marked patrol car. Officer Delman did not know the underlying reason for § 87(2)(b)’s arrest at the time. Numerous people were in the street yelling. The scene was chaotic and Officer Delman did not notice any supervisor directing the response. Officer Delman exited his vehicle and did crowd control. The crowd pushed against Officer Delman and the other crowd control officers, yelling obscenities at them. Officer Delman stated that he feared for his safety because “there seemed to be no control over these people.” The civilians seemed to Officer Delman to be friends or family members of § 87(2)(b) and complained about how § 87(2)(b) was being treated. The group was approximately seven people in a small area in front of a particular house, as well as people scattered along the block, but the scene was not a riot or “angry mob” situation. Officer Delman told one particular member of the group (by investigation as § 87(2)(b) numerous times to get back, but he did not do so. The crowd was pushing up against officers. Officer Delman specified that he was never struck, just pushed up against. Other officers went into the crowd and started arresting people for disorderly conduct. The members of the crowd resisted arrest. Officer Delman sprayed pepper spray



into the face of § 87(2)(b) who was still pushing to get to § 87(2)(b). § 87(2)(b) fell back into the crowd holding his eyes as the other officers were moving in. The stream of Officer Delman's pepper spray moved off § 87(2)(b) and hit others in the mixed group of police and civilians. Officer Delman was aware that other officers were hit with overspray, but did not know who they were. Officer Delman stated that one or two of the people who were arrested were treated medically for the pepper spray exposure. Because of the large number of officers present, Officer Delman never touched or handcuffed anyone. Four to five people from the group in the small area were arrested by other officers. Some of the civilians were arrested up against a nearby gate and some of them were arrested on the ground. The arrestees were then taken to the stationhouse. At the stationhouse, Officer Delman saw § 87(2)(b) in front of the desk, suffering from a strong reaction to the pepper spray. Officer Delman also saw an individual (identified as § 87(2)(b) with a pinky finger that was "deformed" and appeared to be broken. Officer Delman did not know how this injury came about. EMS was present at the stationhouse. Officer Delman informed Officer Barker that he had used pepper spray. Officer Delman later learned that Officer Barker had been injured during the incident and went out on line of duty leave.

### ***Witness Officer Scott McMaster***

Officer Scott McMaster was interviewed at the CCRB on June 6, 2002 (enclosures 21a-21b). Officer McMaster worked from 7:15 PM to 7:50 AM between November 7 and November 8, 2001. Officer Barker was assigned alone in uniform to a CONDOR foot post on § 87(2)(b) from § 87(2)(b) to § 87(2)(b). Officer McMaster read his memo book entries (enclosures 19a-19b) into the record, indicating that he responded to a 10-85 (call for backup) at § 87(2)(b) and § 87(2)(b) at 10:13 PM. At 10:20, Officer McMaster noted that five individuals were under arrest from the front of § 87(2)(b). Officer McMaster noted going to the stationhouse and noted the arrest numbers assigned to the arrested individuals. Officer McMaster stated that he heard the 10-85 on his radio as a request for one car (Officer Barker believed it was a non-emergency call). The call was made by Officer Barker, who was another foot post officer working next to Officer McMaster (approximately four blocks away). Officer McMaster responded to the job at a fast walk because he had a hunch from the way Officer Barker put over the 10-85 that he wanted a large response. At the scene, on § 87(2)(b) approximately eight to ten people were gathered in a crowd. There were numerous other civilians scattered throughout the area, for a total of approximately 30 people. A number of police cars were at the scene, including a "couple" of unmarked cars. Officer McMaster saw one civilian already under arrest in the back seat of one car. The street was blocked by the cars and the crowd. The members of the crowd were yelling and people were getting arrested both in the street and on the sidewalk in front of § 87(2)(b). Civilians and police officers were pushing each other and the scene was chaotic. Officer McMaster did not notice the crowd trying to go any particular place and could not recall any of the content of what was being yelled during the incident. Officer McMaster was tired from hurrying to the location and did not participate in the incident; he stated, "I wasn't doing anything else but just standing there." Officer McMaster looked for Officer Barker but did not see him until later at the stationhouse. Officer McMaster stated that he did not see pepper spray being used at the scene, but Officer Delman said at the stationhouse that he had used it.

Officer McMaster informed a sergeant at the scene (name not known) that he was the only foot post left in the area, and the sergeant told Officer McMaster to come back to the stationhouse. Officer Barker did not ride with any of the arrestees. At the stationhouse, Officer McMaster saw Officer Barker and processed the arrests, which were assigned to him because Officer Barker got an injured shoulder and went to the hospital. All of the arrestees were young men. Officer McMaster saw that one of the arrestees had a dislocated finger, one had a minor cut on the face or head, and two were suffering from pepper spray. EMS was called and used water to flush the eyes of the two who had been pepper sprayed. The arrestees were all treated and released.

Officer McMaster filed sworn affidavits (enclosures 20a-20d), but explained that the statements they contain are incorrect. Officer McMaster stated that he told the assigned Assistant District Attorney (ADA) that he was assigned the arrests, but she did not seem to understand and mistakenly indicated on the affidavits that various statements were made by the arrestees to Officer McMaster. According to Officer McMaster, Officer Barker said these statements were made to him. Officer McMaster went to court in

relation to the arrests one time, but was told by the ADA that he was not needed. Officer McMaster denied witnessing any of the allegations, apart from minor physical force used to make arrests.

***Subject Officer James McKenna***

Officer James R. McKenna was interviewed at the CCRB on June 10, 2002 (enclosures 23a-23b). Officer McKenna stated that on November 7, 2001, he worked from 3 PM to 11:35 PM assigned to patrol Sector E of the 83 Precinct in uniform in a marked patrol car with Officer Brian Kenny. Officer McKenna noted in his memo book (enclosures 22a-22d) that at 10:13 PM, a 10-85 (call for backup) was called on § 87(2)(b) between § 87(2)(b) and § 87(2)(b). At 10:16 PM, Officer McKenna arrived, and at 10:22 PM he transported two prisoners to the 83 Precinct stationhouse. Officer McKenna did administrative work in regard to the arrests until 11:16 PM.

Officer McKenna stated that when he arrived on § 87(2)(b) in response to the 10-85, there were civilians and officers “everywhere.” Officer McKenna could not independently recall who called the 10-85 but believed it was an emergency. Officer McKenna did not see Officer Barker at the scene. There were uniformed units as well as unmarked cars present. Officer McKenna saw officers (identities not recalled) having difficulty handcuffing a young male black (unknown identity) who was “waving his arms” inside a gated yard, so he assisted them by pulling the individual’s hands behind his back. Officer McKenna then placed the individual in handcuffs. This individual was not attempting to strike officers but was resisting arrest. There were more than 20 officers and civilians in the yard as he helped to arrest the individual. Officer McKenna did not know whether other arrests were made in the yard and was not aware of pepper spray being used there. There was no supervisor directing the response. Officer McKenna placed the individual he had handcuffed in a patrol car. Officer McKenna did not know whether this individual was injured. As Officer McKenna was getting ready to leave, there was still a large crowd there, and Officer McKenna saw another individual who gave the 83 Precinct Administrative Lieutenant Flynn “a hard time” by refusing the lieutenant’s order to get on the sidewalk, instead trying to push through and get to unknown prisoners who were in a nearby patrol car. This individual (identified by investigation as § 87(2)(b)) was pushed by unknown officers back against a vehicle parked in the area. Officer McKenna helped turn § 87(2)(b) around and handcuff him. § 87(2)(b) did not resist arrest when Officer McKenna helped handcuff him. Officer McKenna could not recall what other officers helped handcuff § 87(2)(b) and did not know who actually placed the handcuffs on him. § 87(2)(b) complained that his finger hurt as soon as he was handcuffed. Officer McKenna saw that one of § 87(2)(b)’s pinky fingers was bent outward at the second knuckle. Officer McKenna stated that he did not know how § 87(2)(b) received this injury. Officer McKenna stated that there were other arrests that he was not involved in. At the stationhouse, Officer McKenna saw EMS present. Officer McKenna waited with the prisoners at the desk for Officer Barker to arrive, cleaned up, and then went out on patrol. Officer McKenna did not notice injuries to any of the prisoners besides § 87(2)(b). Officer McKenna did not recall any officer using strong language at the scene of the arrests. Officer McKenna denied witnessing or committing any of the allegations except the use of physical force previously described.

***Subject Lieutenant Michael Rogers***

Lieutenant Michael Rogers was interviewed at the CCRB on July 31, 2002 (enclosures 29a-29c). Lieutenant Rogers was present at both of the incidents underlying this complaint. On October 31, 2001, Lieutenant Rogers was the 83 Precinct platoon commander and patrolled in uniform with his driver, Officer Rosado, in a marked patrol car. Lieutenant Rogers made entries about the incident on his memo book (enclosures 28a-28e) flysheet showing that at 8:50 PM there was a disorderly crowd at § 87(2)(b) and § 87(2)(b) which was dispersed at 9:06 PM without any crime being committed. Lieutenant Rogers read the following relevant entries from his memo book verbatim into the record: “2050: Pickup, 10-50, disorderly large group playing loud music from radio (boombox, northeast corner § 87(2)(b) and § 87(2)(b)) 2106: 10-91, crowd dispersed, parent uncooperative on scene.” Lieutenant Rogers stated that the group consisted of approximately six male and two female youths. Lieutenant Rogers’ attention was drawn to the group because it appeared that an egg fight was happening between them and another group. A boombox in the area was playing music very loudly and about four of the males were dancing and two were singing along to the music in the middle of the sidewalk. Lieutenant Rogers spoke over the car’s PA system and told the

group to turn the radio down. Lieutenant Rogers decided that the situation might be exacerbated by a tough response and decided to circle the block and see if the situation corrected itself when they returned.

Upon their return the scene was unchanged. Lieutenant Rogers asked whose radio it was, but no one responded. Lieutenant Rogers stated that at this point, the group's behavior constituted disorderly conduct, but he wanted to resolve the situation without making arrests to avoid crowding the precinct with minor offenses on such a busy night. Lieutenant Rogers and Officer Rosado got out of the car and Officer Rosado turned the radio off. One of the males started saying, "What the fuck are you doing?" and complaining that his rights were being violated. Lieutenant Rogers informed the male that if the radio was not kept off, it would be confiscated and a summons issued for disorderly conduct. Lieutenant Rogers and Officer Rosado started asking the members of the group where they lived, and Lieutenant Rogers told them to either head to their own block so that they didn't bother the nearby residents, or clear the sidewalk. The group said no one complained, asked why Lieutenant Rogers cared, and claimed they had the right to do what they were doing. The argument turned into a "back-and-forth" when an older black male (name unknown) on the street nearby urged the group to listen to the officers and disperse. Eventually, the group did disperse. Several of the males and a couple of the females went halfway down the block into a restaurant.

As the officers got back in their car, Lieutenant Rogers heard the boombox begin "blasting" again and saw that part of the group was now playing the music loud and dancing near the entrance to the restaurant. Lieutenant Rogers stated, "Now it's like this thing, you know, 'fuck the police, we can say and do what we want to do.'" Lieutenant Rogers approached the group again and the same argument continued. Lieutenant Rogers called a 10-85 for the Field Training Unit (FTU) sergeant, Sergeant Cawley, to respond, knowing that he was also patrolling for crowds. Sergeant Cawley and "three or four" FTU officers arrived. The officers told the group to clear the entrance to the store if they weren't buying anything. A woman who identified herself as the mother of one of the youths arrived (identified by investigation as § 87(2)(b) and asked what the problem was. Lieutenant Rogers described her as "loud" and "somewhat obnoxious," but Lieutenant Rogers tried to take her to the side and calm her down. The woman's son (identified by investigation as § 87(2)(b) got in the middle of the conversation, telling his mother not to listen to Lieutenant Rogers. Meanwhile, Sergeant Cawley, Officer Rosado, and the FTU officers dealt with the crowd at the store. § 87(2)(b) complained that her son was always being harassed. Lieutenant Rogers stated that § 87(2)(b) told him, "I just had a problem, there was another incident, I'll do this, I'll do that." Lieutenant Rogers responded, "Ma'am, you feel free to do whatever you want to do, that's not necessary, my name's Lieutenant Rogers, I'm the platoon commander." § 87(2)(b) did not want to listen to Lieutenant Rogers, but the crowd dispersed around that time and the officers all left the scene. Lieutenant Rogers felt the situation would have unnecessarily escalated if summonses were issued or arrests were made, so that was not done. Lieutenant Rogers radioed that the job was disposed as 10-91 (non-crime condition corrected). Before leaving, Lieutenant Rogers tried to get § 87(2)(b)'s name, but she refused, saying she was tired of the government always needing her name. Lieutenant Rogers stated that no one was frisked to his knowledge. Lieutenant Rogers denied pushing § 87(2)(b) and did not see anyone else do so. Lieutenant Rogers did not call the group "wise-asses" or hear anyone else do so. Lieutenant Rogers did not recall § 87(2)(b) asking his name but was sure that he said it to her. Lieutenant Rogers did not recall § 87(2)(b) asking anyone else for their names or interacting with Sergeant Cawley. Lieutenant Rogers did not recall any officer named Gomez being present.

On November 7, 2001, Lieutenant Rogers was the Special Projects Lieutenant for the 83 Precinct (his normal assignment at the time). Lieutenant Rogers worked with his driver Officer Rivera in an unmarked car, wearing casual clothing and raid jackets. Lieutenant Rogers read into the records memo book entries indicating that at 10:05 PM, a 10-85 was called for CONDOR foot post Officer Barker at § 87(2)(b) and § 87(2)(b). At 10:20 PM, Lieutenant Rogers noted that he resumed patrol after "numerous" arrests were made while Lieutenant Flynn was on the scene. Lieutenant Rogers noted that Officer Barker was injured. At 10:40 PM, Lieutenant Rogers was in the stationhouse for administrative duties in relation to the incident. Lieutenant Rogers recalled that the 10-85 was called in relation to a foot pursuit. Lieutenant Rogers arrived late on the scene. Lieutenant Flynn and two or three sergeants (names not recalled) were present. A few people were already arrested. Lieutenant Rogers was told that Officer Barker had a minor injury, and at the stationhouse saw a civilian with a small injury to the head. Lieutenant Rogers did not recall pepper spray being used at the scene and did not see Officer Barker use any force.



***Witness Officer Brian Kenny***

Officer Brian E. Kenny was interviewed at the CCRB on August 6, 2002 (enclosures 31a-31b). Officer Kenny did not have his memo book with him, but faxed it (enclosures 30a-30e) revealing that he responded to the job and transported an unnamed prisoner to the stationhouse. Officer Kenny recalled responding to the 10-85 and arriving late on the scene, but had no recollection of any relevant details.

***Subject Officer Michael Barker***

Officer Michael J. Barker was interviewed at the CCRB on October 8, 2002 (enclosures 34a-34c). Officer Barker worked on November 7, 2001 from 7 PM to 10:37 PM assigned to CONDOR foot post #9 in the 83 Precinct. Officer Barker explained that he was doing the foot post assignment as a pre-tour overtime assignment prior to working the midnight to 8 AM shift in the stationhouse. CONDOR foot post #9 is on § 87(2)(b) between § 87(2)(b) and § 87(2)(b). Officer Barker was alone on the post.

Officer Barker read relevant entries from his memo book (enclosures 32a-32e) into the record revealing the following information. At 10 PM, Officer Barker's supervisor (identified by Officer Barker as Sergeant Rodriguez) scratched his memo book. At 10:13 PM, Officer Barker called a 10-85 (call for backup) from the corner of § 87(2)(b) and § 87(2)(b) in response to a disorderly conduct violation by § 87(2)(b) and approximately 10 unidentified others. Officer Barker smelled a strong odor of marijuana near the group and asked the group to disperse. § 87(2)(b) told Officer Barker "to fuck off, he didn't to [sic] anything, other people were smoking it, so fuck yourself." People in the crowd told § 87(2)(b) to leave Officer Barker alone because "he's new." § 87(2)(b) stated, "Fuck him, if he touches me I will fuck him up." Officer Barker called for backup and told § 87(2)(b) to put his hands against the wall. § 87(2)(b) walked fast up the street and Officer Barker followed him. Officer Barker saw a green Nissan Pathfinder "telling deft. to get in, so A/O can't arrest him." § 87(2)(b) kept saying, "fuck him." In front of § 87(2)(b) Officer Barker attempted to arrest § 87(2)(b) who started to fight. "Deft. recived [sic] bloody mouth from fight w/A/O." Officer Barker noted § 87(2)(b) along with "mace," § 87(2)(b) along with "§ 87(2)(b) PO Delman 23705," "§ 87(2)(b) [sic]" along with "mace" and § 87(2)(b) along with "broken finger." At 10:25 PM, Officer Barker was in the stationhouse on administrative duties in relation to the incident, and at approximately 11 PM he went to § 87(2)(b), returning to the precinct for his midnight tour at approximately 2 AM. Officer Barker's entries for the November 8, 2001 midnight tour indicate aided § 87(2)(b) and line of duty report § 87(2)(b), along with a notation that § 87(2)(b) choked him and broke his glasses. At 3 AM, Officer Barker noted that he went on sick leave with abrasions to both knees, a hurt right shoulder, and an abrasion to the front of the neck. Officer Barker's memo book indicates that he was out on line of duty injury § 87(2)(b).

On November 15, Officer Barker was back on normal duty as the arrest processing officer.

Officer Barker stated that a little after 10 PM he approached a group at the corner of § 87(2)(b) and § 87(2)(b) to disperse them, and smelled marijuana. Officer Barker did not see any marijuana. Officer Barker walked "in between" the members of the group and told them, "Look guys, you've got to disperse." One individual in the group (later learned by Officer Barker to be § 87(2)(b) was "just going at me, like, 'Fuck you.'" Officer Barker stated that he became afraid for his safety because § 87(2)(b) was "being a frog, jumping around," and stepped into the middle of § 87(2)(b) screaming at Officer Barker. Officer Barker said, "I'm not accusing you guys of smoking it, I'm asking you guys to disperse." § 87(2)(b) continued yelling at Officer Barker, saying that "someone else was doing it." Officer Barker said, "Look, let me see some ID. You're carrying on." § 87(2)(b) replied, "You touch me, I'll fuck you up." Officer Barker told § 87(2)(b) to calm down and called a 10-85 (call for backup). Officer Barker told § 87(2)(b) to put his hands against the wall and show his ID. § 87(2)(b) began running on the § 87(2)(b) side of § 87(2)(b) toward § 87(2)(b) but stopped and walked when he noticed that Officer Barker wasn't following. A green Nissan Pathfinder drove up beside § 87(2)(b) and Officer Barker heard the driver (identified by investigation as § 87(2)(b) yell at § 87(2)(b) to get in the car so Officer Barker could not arrest him. § 87(2)(b) said, "Fuck him" in reference to Officer Barker and refused to get in the car. Officer Barker began to follow § 87(2)(b) approximately 20 yards behind him. § 87(2)(b) alternated running and walking up the block, then crossed to the east side of § 87(2)(b) and stopped near a parked car. Officer Barker

approached and told § 87(2)(b) “Look, we can end this all, all I want to do is, if you don’t have no warrants or anything like that, you were disrupting traffic, you were acting like a knucklehead, calm down. All I want is your ID, you’ll get a summons, you’ll be on your way.” § 87(2)(b) who was approximately three feet away from Officer Barker, reached out with his right hand and started choking Officer Barker. Officer Barker stated, “After that, we just started, I was trying to get his hands off me, whatever I had to do to get him off.” Officer Barker stated that he was losing breath at this time. Officer Barker grabbed § 87(2)(b) by the lower part of his neck, near the collarbone. When asked whether he grabbed § 87(2)(b)’s throat, Officer Barker stated, “I don’t know where I grabbed, I was fighting for my life.” Officer Barker claimed that he could not recall the details of the struggle. Other officers arrived, including Lieutenant Flynn, who was first on the scene, and jumped on top of Officer Barker and § 87(2)(b) who both hit the ground. After a struggle in which § 87(2)(b) unsuccessfully tried to strike Officer Barker, § 87(2)(b) was subdued and handcuffed. Officer Barker’s glasses had come off and been ruined when the frames were bent during the struggle. (Officer Barker stated that he was farsighted at the time, but had elective surgery in December 2001 and no longer needs glasses.) Officer Barker did not witness anyone else being apprehended in the area, although he learned at the stationhouse about the other arrests. Officer Barker accompanied § 87(2)(b) back to the stationhouse inside a marked patrol car. During the ride, § 87(2)(b) told Officer Barker that he would say Officer Barker had hit him with his flashlight and would sue him. § 87(2)(b) told Officer Barker that he had family “on the job” (working for the police department.) Officer Barker told § 87(2)(b) “Look, you do what you have to do, I’ve been here before, you say what you have to say, I’m going to say what I have to say.” § 87(2)(b) said, “Fuck you, I’m going to own your house.” At the stationhouse, Officer Delman told Officer Barker that he had maced two people, and Officer Barker was informed that one of the others arrested had an injury to a finger (not observed by Officer Barker). Officer Barker stated that he was not involved in processing the arrests. Officer Barker explained that there was an assigned arresting officer, Officer McMaster, who “screwed up the paperwork and put my name down on the arrest reports.” Officer Barker stated that he explained the circumstances of § 87(2)(b)’s arrest to Officer McMaster but did not inform Officer McMaster about the other arrests, not knowing about them. Officer Barker went directly to the hospital, and then went home. Officer Barker stated that he later went to court to testify against § 87(2)(b) but was not called because § 87(2)(b) took a plea bargain. Officer Barker denied using any strong language during the incident. Officer Barker stated that at the hospital he was treated for an injury to his right shoulder, abrasions to his knees, and redness and pain to his neck. Officer Barker claimed that the shoulder injury was a muscle strain from trying to control § 87(2)(b).

#### ***Witness Lieutenant Charles Flynn***

Lieutenant Charles Flynn was interviewed at the CCRB on October 16, 2002 (enclosures 36a-36b). On November 7, 2001, Lieutenant Flynn had just been transferred to the 83 Precinct, was assigned a vehicle driven by Officer Gorman, and was familiarizing himself with the precinct in general. Lieutenant Flynn made no entries about this incident in his memo book (enclosures 35a-35b). At approximately 10:15 PM, a 10-85 was called by Officer Barker. Lieutenant Flynn could not recall the specific content of the call but did recall that it was an emergency. Lieutenant Flynn and Officer Gorman responded and had some difficulty locating Officer Barker. Lieutenant Flynn stated that § 87(2)(b) between § 87(2)(b) and § 87(2)(b) was dark, although lit by streetlights. Lieutenant Flynn did not recall Officer Barker calling out to him or flagging him down, but recalled that they passed Officer Barker before noticing him and then both ran back up the street to assist him. Lieutenant Flynn saw that Officer Barker was struggling with a young black male (identified by investigation as § 87(2)(b) who had one hand (which not recalled) gripping Officer Barker’s throat. Lieutenant Flynn and Officer Gorman immediately began helping Officer Barker subdue § 87(2)(b). Lieutenant Flynn did not see Officer Barker hit § 87(2)(b) with a flashlight or grab § 87(2)(b)’s throat. Officer Barker grabbed § 87(2)(b)’s arm and tried to pull it away from his throat. Several other officers also arrived and assisted in subduing § 87(2)(b) who struggled violently and was difficult to handcuff. Several other civilians actively obstructed the arrest by trying to pull officers away from § 87(2)(b) and were themselves arrested. After a struggle, § 87(2)(b) was cuffed and led to a patrol car. An unidentified man tried to pull § 87(2)(b) away from the officers before he could be placed in the car, and the man was arrested. Lieutenant Flynn himself did not assist in this arrest. Lieutenant Flynn was aware that pepper spray had been used in controlling the crowd but did not witness it being used. Lieutenant Flynn stated that several officers were injured and took line of duty leave, but could not recall what the injuries were or who was injured. Lieutenant Flynn was not aware of injuries to any of the individuals who were arrested,

including § 87(2)(b) on whom he did not see any blood. Lieutenant Flynn denied seeing Officer Barker strike § 87(2)(b) in the face with a flashlight, but stated that such action would have been justified because § 87(2)(b) was choking Officer Barker. Lieutenant Flynn stated that as the Operations Lieutenant for the 83 Precinct, he is usually informed by the Integrity Control Officer about CCRB complaints lodged against officers there. Lieutenant Flynn could not recall learning of the current complaint until he received a notification to come for this interview. Lieutenant Flynn did speak with Officer Barker about the complaint incident, both before and after Officer Barker came to the CCRB. Lieutenant Flynn stated that Officer Barker did not speak about his testimony or the questions that he was asked when he appeared.

***Witness Sergeant Wayne Lock***

Sergeant Wayne Lock was interviewed at the CCRB on October 23, 2002 (enclosures 41a-41b). Sergeant Lock stated that he worked on November 7, 2001 as the Anti-Crime supervisor for the 83 Precinct, with Officer Arroyo and Officer Bono riding with him in an unmarked dark blue Ford Crown Victoria. Sergeant Lock stated that he had only a vague recollection of possibly responding to a call for additional units at § 87(2)(b) and § 87(2)(b) at approximately 10:15 PM. Sergeant Lock recalled that he and the officers with him exited their car at the incident, but could not recall what was happening there despite being asked numerous specific questions.

***Witness Officer Gualberto Garcia***

Officer Gualberto Garcia was interviewed at the CCRB on October 24, 2002 (enclosures 43a-43b). Officer Garcia worked on November 7, 2001 assigned to do a uniformed patrol of sector J of the 83 Precinct with his partner, Officer Collado. Officer Garcia had no entries in his memo book (enclosures 42a-42b) regarding this incident. Officer Garcia recalled that he responded to Officer Barker's 10-85 from the stationhouse and arriving late on the scene. Officer Garcia saw civilians shoving officers, but recalled no other relevant information.

***Witness Officer Philip Huemmer***

Officer Philip Huemmer was interviewed at the CCRB on October 24, 2002 (enclosures 45a-45b). Officer Huemmer worked from 3 PM to 11:35 PM on November 7, 2001 as a domestic violence officer with his partner Officer Vasquez. Officer Huemmer recorded the job in his memo book (enclosures 44a-44c) and noted that at 10:20 PM he had one under arrest in front of § 87(2)(b) and transported this person to the stationhouse with one other arrestee. Officer Huemmer noted that after arriving at the stationhouse, he prepared a stop and frisk report for § 87(2)(b) who had been apprehended with five others at the location involved in a large disturbance, but subsequent investigation determined that § 87(2)(b) was directed to an area inside a fence prior to the disturbance and was moving there when arrested. Officer Huemmer noted that § 87(2)(b)'s role in the incident was not known at the time and that he was removed to the stationhouse for officer safety. § 87(2)(b) stated "I was just taking out my garbage, I just came from the hospital with my mother."

Officer Huemmer stated that he heard a 10-85 (call for additional units) called by Officer Barker at approximately 10:15 PM and responded to the scene without his partner. Officer Huemmer arrived and saw Officer Barker on the sidewalk with other officers, but didn't see what they were doing. Officer Huemmer saw that a crowd was gathering and getting close to Officer Barker. Officer Huemmer denied seeing Officer Barker choke anyone, anyone choke Officer Barker, or Officer Barker swing a flashlight. § 87(2)(b) was in a fenced-in area in front of a residence with a large group of other people. At the time, Officer Huemmer did not know § 87(2)(b)'s exact involvement in the incident, but the people in the group were pushing and shoving officers in an attempt to get to where Officer Barker was. The crowd was also yelling (Officer Huemmer could not recall what was being yelled.) Officer Huemmer was pushed himself, but stated that it was not an assault, just people bumping against him. Officer Huemmer did not fall. Officer Huemmer used verbal commands to try to disperse the crowd. Some people complied but most did not. Officer Huemmer did not notice anyone use pepper spray on the crowd and stated that he was not hit by overspray. Officer Huemmer was inside the fenced-in area where the pushing and shoving was going on, and Officer Huemmer handcuffed § 87(2)(b) and removed him to the precinct because he appeared to be

part of that crowd. At the same time, other officers (not recalled by Officer Huemmer) were arresting others around him. At the precinct, Officer Huemmer learned that § 87(2)(b) was not directly involved, prepared a stop and frisk report, and released § 87(2)(b). Officer Huemmer denied seeing any injured civilians and stated that he did not hear anyone complain of injuries.

***Witness Officer Jose Rosado***

Officer Jose Rosado was interviewed at the CCRB on October 28, 2002 (enclosures 47a-47b). Officer Rosado stated that on October 31, 2001, he was assigned as the operator for Lieutenant Rogers. Officer Rosado stated that the night was busy, being Halloween night, and claimed that he had no recollection of the incident. Officer Rosado had no entries in his memo book (enclosures 46a-46b) regarding this incident.

***Witness Lieutenant Gerard Cawley***

Lieutenant Gerald Cawley was interviewed on November 6, 2002 (enclosures 49a-49b). Lieutenant Cawley, who had the rank of sergeant at the time of the incidents, was the Field Training Unit (FTU) Sergeant on October 31, 2001 in the 83 Precinct. Lieutenant Cawley made no entries in his memo book (enclosures 48a-48c) regarding this incident. Lieutenant Cawley vaguely remembered arriving late on the scene as Lieutenant Rogers attempted to break up a group of approximately seven people gathered at the corner of § 87(2)(b) and § 87(2)(b). The group dispersed almost as soon as he arrived without any incident. Lieutenant Cawley stated that he himself did not push anyone in the group, did not call anyone a “wise-ass,” and did not frisk anyone. Lieutenant Cawley did not see anyone else do any of these things.

***Witness Officer Michael Corvi***

Officer Michael Corvi was interviewed on November 8, 2002 (enclosures 51a-51b). Officer Corvi stated that he was assigned on the night of November 7, 2001 to patrol sectors A and B of the 83 Precinct. At approximately 10:15 PM, Officer Corvi and his partner Officer Delman were in the middle of responding to a vehicle accident when a call for backup came over the radio. Officer Corvi and Officer Delman responded to § 87(2)(b) between § 87(2)(b) and § 87(2)(b). Officer Corvi saw “a couple of officers” (identities unknown except for Officer Barker) struggling to arrest a civilian (identified by investigation as § 87(2)(b)). § 87(2)(b) was half on the ground and was trying to prevent his arms from being brought behind his back. Officer Corvi assisted the other officers by helping pull § 87(2)(b)'s arms behind his back. Within approximately 20 seconds, § 87(2)(b) was handcuffed. Officer Corvi did not see any officer strike § 87(2)(b) with a flashlight or choke him, and also did not see § 87(2)(b) strike or choke anyone.

After § 87(2)(b) was handcuffed, Officer Corvi went to assist other officers dealing with a crowd of approximately 20 individuals who were pushing. As Officer Corvi began trying to calm and disperse the crowd, Officer Delman sprayed an individual (identified by investigation as § 87(2)(b)) with pepper spray, hitting Officer Corvi with overspray. Officer Corvi's eyes began to water and he stepped back. Approximately four or five people were arrested at the scene. Officer Corvi and Officer Delman went back to the stationhouse, where Officer Corvi washed his eyes out. Officer Corvi saw the arrestees at the desk, and noticed that § 87(2)(b) was suffering from the effects of the pepper spray. Officer Corvi did not notice any other injuries to the prisoners.

***Witness Sergeant Joseph Delduca***

Sergeant Joseph Delduca was interviewed at the CCRB on June 24, 2002 (enclosures 25a-25b). His memo book (enclosures 24a-24c) and testimony established that he was not at the October 31 incident.

***Witness Officer Waldo Cuba***

Officer Waldo Cuba of the 83 Precinct was interviewed at the CCRB on July 1, 2001 (enclosures 27a-27b). Officer Cuba's memo book (enclosures 26a-26e) and testimony established that he was not involved.



***Witness Officer Pedro Vasquez***

Officer Pedro Vasquez was interviewed at the CCRB on October 22, 2002 (enclosures 38a-38b) and stated that he worked on November 7, 2001 with Officer Huemmer. Officer Vasquez stated that he did not respond to the job because he was on meal at the time.

***Witness Sergeant John Delpozzo***

Sergeant John Delpozzo was interviewed at the CCRB on October 23, 2002 (enclosures 40a-40b) and stated that on November 7, 2001 he worked with Sergeant Kurt Twining as patrol supervisors. He and Sergeant Twining responded to the incident, but a “no further” was called and they never arrived.

***Witness Sergeant John Drouin***

Sergeant John Drouin was interviewed at the CCRB on November 19, 2002 (enclosures 53a-53b). Sergeant Drouin was a uniformed patrol supervisor on November 7 but stated that he did not respond to the incident.

***Medical records:***

§ 87(2)(b)

Medical records (enclosures 54a-54j) for § 87(2)(b) were obtained. An Ambulance Call Report (ACR) notes that § 87(2)(b) complained that “I got maced in my eyes.” § 87(2)(b) had received irrigation previously at the 83 Precinct. “Little redness” and “little swelling” were noted to his eyes. Medical records from § 87(2)(b) indicate that § 87(2)(b) complained of pain to his eyes after being maced. § 87(2)(b) told the doctor he had been involved in a fight. § 87(2)(b) had reddened eyes and complained of “blurry vision.” § 87(2)(b) was diagnosed with pepper spray exposure and treated with eye wash, given an ointment for both eyes and instructed to return if his condition worsened.

§ 87(2)(b)

The ACR (enclosures 55a-55v) indicates that § 87(2)(b)'s chief complaint was “my right pinky is bent.” Front and back blunt trauma to the finger with swelling and bruising was noted, as well as fracture or dislocation. The mechanism of injury was listed as a fall. The EMT noted in the comments section that § 87(2)(b) told the EMT, “I heard it pop.” At § 87(2)(b) on § 87(2)(b), § 87(2)(b) claimed the pain to his finger was secondary to being hit by an officer. Deformity to the finger was noted, but negative swelling, redness, or numbness. X-rays indicated a dislocation to the finger. An orthopedic exam noted swelling and an angular deformity but no bruising. A splint was applied to the right pinky. On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) for a follow-up visit and his finger was mildly swollen and painful. On § 87(2)(b), § 87(2)(b) went again to § 87(2)(b) and swelling and pain were noted to the finger. § 87(2)(b) was sent to the orthopedic clinic for an appointment. The orthopedic clinic saw § 87(2)(b) on § 87(2)(b) and noted that § 87(2)(b)'s right pinky was swollen and painful when he attempted to move it. § 87(2)(b), § 87(2)(b) visited the ambulatory care clinic and it was noted that his right pinky was bent outwards approximately 30 degrees. On § 87(2)(b), § 87(2)(b) returned and his right pinky was still swollen.

§ 87(2)(b)

The ACR (enclosures 56a-56h) show that § 87(2) stated, “I was maced in my face.” § 87(2) claimed that while involved in a large fight, his eyes, mouth, and nose began to burn. According to unspecified officers, pepper spray was used. No swelling, irritation, or inflammation was visible, but “irrigation was performed anyway.” § 87(2) claimed no other injuries. At § 87(2)(b) § 87(2) stated that he was pepper sprayed by the police when he was in a fight in the street. No redness was noted. § 87(2) was given an ointment for his eyes and released.

§ 87(2)(b)

The ACR (enclosures 57a-57k) shows that § 87(2)(b) stated, “I was hit with a flashlight in the mouth” and claimed his bottom teeth felt loose. Blunt soft tissue trauma was noted to the mouth, and the EMTs controlled bleeding from the lower lip. § 87(2)(b) was transported to § 87(2)(b) where he told the triage nurse that he was hit by a flashlight. A laceration to his lower lip was noted. The examination revealed active bleeding, minimal swelling, and a loose front bottom tooth. § 87(2)(b) was referred for treatment by another unit in the hospital, which noted mobility of the upper and lower central incisor teeth and a swollen and lacerated lower lip, closed with three sutures.

***Officer Barker:***

§ 87(2)(b)

***Police documents:***

The sprint job from October 31 (enclosures 59a-59d) confirms that Lieutenant Rogers handled a disorderly group at the corner of § 87(2)(b) and § 87(2)(b) but provides no other useful information. The sprint report and radio traffic from November 7 indicates that Officer Barker called for backup and then failed to respond when Central attempted to get further information about his location. The tape of the radio traffic reveals that there was concern for Officer Barker’s safety for this reason, although in under two minutes, Lieutenant Flynn indicated that he had found Officer Barker, who was not injured, and ordered that no further units respond to the incident.

Online booking worksheets and BADS printouts for the November 7 arrests (enclosures 60a-60k) indicate that § 87(2)(b) was “maced” when he attempted to interfere with another’s arrest. The reports for § 87(2)(b), § 87(2)(b), and § 87(2)(b) indicate that force was used to overcome assault, § 87(2)(a) 160.50. § 87(2)(b)’s report indicates that he “fought” with the arresting officer after trying to interfere in another arrest. § 87(2)(a) 160.50

The Medical Treatment of Prisoner Form for § 87(2)(b) (enclosures 61a-61e) indicates that he dislocated his right small finger when he struggled to avoid arrest and was treated at § 87(2)(b). No other medical treatment of prisoner forms were forwarded to the CCRB. An Aided Report and Line of Duty Injury Report for Officer Barker § 87(2)(b)

The 83 Precinct command log from November 7 (enclosures 62a-62e) notes the arrests of § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b). All but § 87(2)(b) are indicated to be injured. There is no notation regarding § 87(2)(b)

***Dispositions of court cases:***

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

***Status of civil suit:***

A notice of claim (enclosures 12a-12b) was filed by § 87(2)(b) regarding the incident. § 87(2)(b) and § 87(2)(b) made 50-H depositions (enclosures 11a-11hh and 14a-14tt) in regards. The civil case is still pending.

***Records of prior convictions and disciplinary action:***

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer Barker, Officer Delman, and Officer McKenna have received no prior discipline known to the CCRB. Substantiated charges against Lieutenant Rogers are pending at the Department Advocate's Office at the time of this report.

**Conclusions and recommendations**

***Officer identification:***

October 31 incident: Lieutenant Rogers stipulated that he was present at the October 31, 2001 incident and

§ 87(2)(g)

§ 87(2)(b) and § 87(2)(b) described the subject officer as a supervisor and stated that he was "Dominican;" § 87(2)(g)

November 7 incident: Documents and witness testimony, including Officer Barker's own stipulations in his testimony at the CCRB, establish beyond question that Officer Barker is the principle subject of the November 7 allegations regarding § 87(2)(b). The sprint and radio records establish that a lieutenant was on the scene early; Lieutenant Flynn and Officer Barker stipulate that Lieutenant Flynn was the first to arrive for the 10-85. Officer Delman stipulated that he used pepper spray at the scene, information that was also noted in Officer Barker's memo book and testified to by Officer McMaster, who processed the arrests. Officer McKenna stipulated that he arrested and handcuffed § 87(2)(b) whose finger was dislocated during the process.

***Facts not in dispute:***

October 31 incident: It is undisputed that § 87(2)(b) and several others were listening to music on a portable stereo at the corner of § 87(2)(b) and § 87(2)(b) when Lieutenant Rogers ordered them to disperse. The group did not willingly disperse, and § 87(2)(b) complained to Lieutenant Rogers. In the middle of the incident, § 87(2)(b) arrived and also complained to Lieutenant Rogers. The incident ended at that time.

November 7 incident: The following facts are established without dispute by the testimony of the witnesses. Marijuana could be smelled in the air when Officer Barker ordered the group at the corner of § 87(2)(b) and § 87(2)(b) to disperse. § 87(2)(b) refused to leave immediately. § 87(2)(b) and Officer Barker argued at the corner. § 87(2)(b) pulled up and spoke to § 87(2)(b) from his car briefly. At that approximate time, § 87(2)(b) moved quickly toward his home from the corner. Officer Barker called for backup and followed § 87(2)(b) on foot. Lieutenant Flynn arrived as § 87(2)(b) and Officer Barker came in physical contact on the sidewalk outside of § 87(2)(b). When Lieutenant Flynn approached, § 87(2)(b) was gripping Officer Barker's throat in his hand. § 87(2)(b) struggled to avoid being arrested. § 87(2)(b) and § 87(2) were upset about the encounter between § 87(2)(b) and Officer Barker, which they witnessed. Officer Delman pepper-sprayed § 87(2)(b) in the face, hitting § 87(2) and Officer Corvi with overspray. § 87(2)(b), § 87(2)(b), § 87(2), and § 87(2)(b) were arrested in front of § 87(2)(b) after the pepper spray was discharged. § 87(2)(b) exited § 87(2)(b) and was arrested by Officer McKenna. When Officer McKenna handcuffed him, § 87(2)(b)'s right pinky finger was dislocated.

***Facts in dispute:***

October 31 incident: § 87(2)(g) Lieutenant Rogers denied that he called the group of which § 87(2)(b) was a member “wise-asses,” denied that he pushed § 87(2)(b) and denied that he failed to provide his badge number or name when it was requested, as § 87(2)(b) and § 87(2)(b) both alleged.

November 7 incident: The broad outlines of this incident are not in dispute, as described above. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) admitted that he referred to Officer Barker as an “asshole” at that time, but Officer Barker claimed that § 87(2)(b) threatened to hurt Officer Barker if he touched him and that § 87(2)(b) moved into the street on § 87(2)(b). Officer Barker claimed that he ordered § 87(2)(b) to put his hands on a wall and produce ID, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Instead, the officers describe § 87(2)(b) grabbing Officer Barker by the throat. Lieutenant Flynn explicitly denied that Officer Barker had his hand on § 87(2)(b)'s throat, while Officer Barker stated that he grabbed § 87(2)(b) in the area at the bottom of the neck while struggling to prevent § 87(2)(b) from choking him. § 87(2)(b) admits that he choked Officer Barker, but states that he did so only after Officer Barker began choking him, in the course of trying to free himself. § 87(2)(g)

Officer Barker and Lieutenant Flynn both deny that Officer Barker struck § 87(2)(b) in the face with his flashlight, as alleged by § 87(2)(b), § 87(2)(b), and § 87(2). Lieutenant Flynn denied seeing any blood on § 87(2)(b) at the scene, while Officer Barker noted bleeding to § 87(2)(b)'s mouth in his memo book and stated that it was caused by an unknown event during the struggle.

§ 87(2)(b) claimed that Officer Delman pepper sprayed him after he and the others in front of § 87(2)(b) were already in handcuffs. Officer Delman stated that he pepper-sprayed § 87(2)(b) before he was handcuffed, for purposes of controlling his disorderly conduct.

***Credibility:***

October 31 incident: § 87(2)(b), § 87(2)(g)

November 7 incident:

§ 87(2)(b) provided a detailed account of the incident. § 87(2)(g) — § 87(2)(b) incorrectly believed that § 87(2)(b) who lives with the § 87(2) family, was “§ 87(2) § 87(2)(b) and confused § 87(2)(b) for another of the older § 87(2) brothers, § 87(2)(b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) waited a

week after this incident to file the complaint, § 87(2)(g) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) § 87(2)(b) filed no civil claim, is taking no part in § 87(2)(b) and § 87(2)(b)'s civil lawsuit, and did not file this complaint. § 87(2)(b) spoke to the CCRB after the criminal charges against him were resolved § 87(2)(a) 160.50 § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Lieutenant Flynn stated that he did not notice injury to § 87(2)(b) although he directly handled him, and claimed that multiple officers whose names he could not recall were injured despite the lack of line of duty reports for them. Lieutenant Flynn claimed that civilians in the area were physically interfering with § 87(2)(b)'s arrest, although this was not reflected in any other witness testimony or police reports. § 87(2)(g)

Regarding other police witnesses, many of those who were present at the November 7 incident failed to recall the incident or provide relevant information. This includes the sergeants, not a single one of whom testified to taking any commanding role in the incident. Only Sergeant Lock admitted to being at the scene—§ 87(2)(g)—and Sergeant Lock claimed to have no significant recollection.

***Allegation A: Discourtesy: On October 31, 2001, Lieutenant Michael Rogers spoke rudely to § 87(2)(b)***

This allegation stems from the complaining witnesses' claims that Lieutenant Rogers referred to the youths as "wise-asses." § 87(2)(g)

***Allegation B: Abuse of Authority: On October 31, 2001, Lieutenant Michael Rogers refused to provide his shield number to § 87(2)(b)***

The § 87(2)(b) claimed that Lieutenant Rogers failed to provide his shield number when asked. Lieutenant Rogers contends that he provided his name to the § 87(2)(b) but was not asked for a shield number. § 87(2)(g)

***Allegation C: Force: On October 31, 2001, Lieutenant Michael Rogers used physical force against § 87(2)(b)***

§ 87(2)(g)

***Allegation D: Force: On November 7, 2001, Officer Michael Barker used a chokehold on § 87(2)(b)***

***Allegation E: Force: On November 7, 2001, Officer Michael Barker struck § 87(2)(b) with a flashlight.***

***Allegation F: Abuse of authority: On November 7, 2001, Officer Michael Barker arrested § 87(2)(b)***

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) fought with Officer Barker and choked him. Lieutenant Flynn then helped place § 87(2)(b) to the ground, and § 87(2)(b) managed to stand up again. Officer Barker then swung a flashlight at § 87(2)(b) twice, striking him once in the lower lip, causing a laceration and loosened teeth. § 87(2)(b) was subsequently handcuffed. § 87(2)(g)

Patrol Guide procedure 203-11 (enclosures 1a-1b) forbids the use of chokeholds, defined as placing any pressure on the esophagus. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) Administrative courts have held that force used incident to an unjustified arrest is punishable misconduct (enclosures 3a-3q). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) admitted that he fought with Officer Barker after Officer Barker's chokehold was released. Officer Barker and Lieutenant Flynn took § 87(2)(b) to the ground to arrest him, but by all accounts § 87(2)(b) fought his way back to his feet. § 87(2)(b), § 87(2)(g)

***Allegation G: Force: On November 7, 2001, Officer Eric Delman used pepper spray against § 87(2)(b)***

§ 87(2)(g)

§ 87(2)(b) Upon arriving, Officer Delman was confronted with a chaotic scene involving a group of upset young men who bumped up against police as they protested § 87(2)(b)'s arrest. § 87(2)(g)

***Allegation H: Abuse of authority: On November 7, 2001, Officer James McKenna arrested § 87(2)(b)***

***Allegation I: Force: On November 7, 2001, Officer James McKenna used physical force against***

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) The disorderly conduct statute (enclosure 2a) indicates that a person commits disorderly conduct when, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof," he "engages in fighting or in violent, tumultuous or threatening behavior"; makes "unreasonable noise"; "in a public place" uses "abusive or obscene language, or makes an obscene gesture"; "without lawful authority, he disturbs any lawful assembly or meeting or persons"; "obstructs vehicular or pedestrian traffic"; "congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse"; or "creates a hazardous or physically offensive condition by any act with serves no legitimate purpose." § 87(2)(b), § 87(2)(g)

§ 87(2)(b) The resisting arrest statute is violated when someone "intentionally prevents or attempts to prevent a police officer ... from effecting an authorized arrest of himself or another person." Even Officer McKenna testified that § 87(2)(b) did not struggle when apprehended. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Officer McKenna himself admitted that § 87(2)(b) did not resist arrest, the top charge against him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) was also arrested § 87(2)(a) 160.50 .

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: